

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

W.R. GRACE & CO., et al.,

Debtors.

)
) **Chapter 11**
) **Case No. 01-1139 (JKF)**
) **(Jointly Administered)**
)
) **Objection Deadline: Feb. 1, 2007 @ 3:00 p.m.**
) **Hearing Date: Feb. 2, 2007 @ 3:30 p.m.**
) **Related Dkt. Nos. 14441, 14442, 14450, 14460**
)

**FUTURE CLAIMANTS' REPRESENTATIVE'S MEMORANDUM IN SUPPORT
AND JOINDER IN THE OPPOSITION OF THE OFFICIAL COMMITTEE OF
ASBESTOS PERSONAL INJURY CLAIMANTS' TO DEBTORS' EXPEDITED
MOTION TO MODIFY ORDER REGARDING PRODUCTION OF X-RAYS
BASED ON SUBSTANTIAL NON-COMPLIANCE WITH ORDER¹**

David T. Austern, the Court-appointed legal representative for future asbestos claimants (the "Future Claimants' Representative" or "FCR") joins in the Opposition of the Official Committee of Asbestos Personal Injury Claimants (the "ACC") to the above-captioned Debtors' (collectively "Grace" or "Debtors") *Expedited Motion to Modify Order Regarding Production of X-Rays Based on Substantial Non-Compliance With Order* (Dkt. No. 14441) (the "Motion").

Through this Memorandum, the FCR adopts by reference all the arguments advanced by the ACC. Additionally, the FCR wishes to draw the Court's attention to the following statement in the Debtors' companion *Motion Seeking Leave to File Emergency Motion to Modify Order Regarding Production of X-Rays Based on Substantial Non-Compliance With Order*:

¹ By captioning this Memorandum to include the full title of the Debtors' Motion, the FCR expressly rejects the demonstrably false representation that there has been "substantial non-compliance" with the Court's December 22, 2006 Order Regarding X-Ray Evidence. No "non-compliance" – substantial or otherwise – has occurred, as is plain from the order itself and the facts set forth in the Debtors' Motion and supporting exhibits.

Debtors seek an expedited consideration of this motion in an effort to resolve these issues prior to the expert report deadlines. Based on the amended CMO entered December 20, 2006, the expert reports related to estimation methodology are due March 16, 2007, and the supplemental expert reports related to non-estimation methodology issues are due March 30, 2007.

Dkt. No. 14442, at p. 1.

The FCR trusts that the Debtors, having based their request for expedited consideration of their Motion on the existing deadlines governing the submission of expert reports related to estimation methodology and supplemental expert reports related to non-estimation methodology, will not be seeking to adjust those deadlines at the February 26, 2007 omnibus hearing. As the Court will recall, at the January 23, 2007 omnibus hearing, counsel for the Debtors stated in the context of a discussion of the X-rays issue:

We've a pretrial order that anticipated that this material be available a long time ago, and what's happening now is, they're saying, Let's hold the date. Let's hold the whole pretrial order, but we're still not giving you the information that's necessary for us to complete the preparation of the case. *I'm just alerting the Court to this, that we will take up at the next omnibus – we'll make a proposal for shifting some of the pretrial dates so we can get now this data analyzed.*

Jan. 23, 2006 Bankr. Hr.'g Tr., Dkt. No. TBD, at pp. 84-85 (emphasis added). Surely the Debtors would not use the existing expert report deadlines to obtain expedited consideration of their Motion, knowing that they intend to present this Court with a request to adjust those dates after the fact. If that is the case, the FCR objects to and opposes the Debtors' request for expedited consideration of the Motion and requests that the FCR be heard at the February 26, 2007 omnibus hearing regarding the Debtors' proposal for adjustments to the pretrial deadlines.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Raymond G. Mullady

Roger Frankel

Richard H. Wyron

Raymond G. Mullady, Jr.

3050 K Street, NW

Washington, DC 20007

Telephone: (202) 339-8400

John C. Phillips, Jr. (#110)

PHILLIPS, GOLDMAN & SPENCE, P.A.

1200 North Broom Street

Wilmington, DE 19806

Telephone: (302) 655-4200

Counsel for David T. Austern,

Future Claimants' Representative

Dated: February 1, 2007